

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

GARRET SITTS, et al., Plaintiffs, v. DAIRY FARMERS OF AMERICA, INC. and DAIRY MARKETING SERVICES, LLC, Defendants.	Civil Action No. 2:16-cv-00287-cr
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DEFENDANTS DAIRY FARMERS OF AMERICA, INC. AND
DAIRY MARKETING SERVICES, LLC'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendants Dairy Farmers of America, Inc. and Dairy Marketing Services, LLC (collectively, “DFA”, unless the context requires otherwise), by counsel, hereby move for an order granting summary judgment on the claims set forth in Plaintiffs’ Amended Complaint (ECF No. 29).

As set forth more fully in the accompanying memorandum of law, the grounds for this motion are as follows:

1. Plaintiffs’ claim that DFA engaged in a single, overarching conspiracy in violation of Sections 1 and 2 of the Sherman Act fails as a matter of law, because plaintiffs cannot establish a single conspiracy among DFA and all the various participants that plaintiffs claim are part of the conspiracy, without evidence that, in addition to allegedly conspiring with DFA, the various alleged coconspirators also conspired with each other. Plaintiffs have no such evidence, and thus DFA is entitled to judgment on Counts One and Four of the Amended Complaint.

2. Plaintiffs’ claims also fail because plaintiffs cannot establish that any alleged single conspiracy actually impacted each of the 122 plaintiffs individually, as required by Section 4 of the Clayton Act. An expert’s purported demonstration of *market* harm does not establish impact to any individual plaintiff, as a matter of law. Indeed, there is a complete absence in the record of this case of any evidence of harm specific to each of the 122 plaintiffs.

3. Plaintiffs’ attempted monopsony and monopsony claims (Counts Two and Three) also fail because plaintiffs presented no analysis that DFA and DMS together possess monopsony power in the relevant market or that DFA and DMS have a dangerous probability of acquiring such power. Indeed, plaintiffs’ expert admitted that he only analyzed the market power resulting from the combined market share of all of the entities that plaintiffs allege conspired together in this case. Because plaintiffs have no evidence that DFA’s conduct, by itself or with DMS, monopsonized

the relevant market, plaintiffs' unilateral conduct claims under Section 2 of the Sherman Act fail, as a matter of law.

Dated: January 11, 2019

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2019, I electronically filed with the Clerk of Court, and served counsel of record by electronic mail, the foregoing document using the CM/ECF system. The CM/ECF system will provide service of such filing via Notice of Electronic Filing (NEF) to the following NEF parties:

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